

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EVERYTHING CYCLES, INC.,)	
)	
Plaintiff,)	Civ. No. 07-1170-TC
)	
vs.)	
)	
)	AMENDED OPINION AND ORDER
)	
AMERICAN HONDA MOTOR CO., INC.,)	
Defendant.)	

COFFIN, Magistrate Judge.

Before the court is defendant's motion for summary judgment (#31). For the reasons that follow, summary judgment is granted.

BACKGROUND

The record discloses the following facts. Plaintiff Everything Cycles, Inc. (ECI), is a motorcycle retail company owned by Randy Wing. ECI entered into Sales and Service Agreements with defendant American Honda Motor Co. (AHM), which permitted plaintiff to sell and service Honda motorcycles, motor scooters, and all-terrain vehicles. Until July 2007, Wing operated the business in Roseburg, Oregon.

1 The Sales and Service Agreements allow termination under
2 certain circumstances. AHM may terminate the agreement when a
3 dealer is accused of a crime that may adversely affect the
4 reputation of the dealer or AHM, or where the dealer is convicted
5 of a crime that may adversely affect the goodwill or reputation
6 of AHM.¹ Def. Ex. 12-14. Termination is also permitted when the
7 dealer fails to maintain a business license or relocates the
8 business without AHM's consent. Id.

9 In 2005, Wing was convicted of two counts of theft, one
10 count of attempted theft, and one count of possession of a stolen
11 vehicle. The convictions arose from Wing's purchase of a stolen
12 Suzuki motorcycle on eBay. The record demonstrates that Wing was
13 not fully forthcoming with the police during the investigations,
14 and at times, he was dishonest with them concerning his
15 possession of certain parts. He also told an employee to lie to
16 the police about the location of parts. For sentencing purposes,

18 ¹ The agreements state that termination is permitted where

19 [a]ny accusation or charge of any crime or violation
20 of any law relating to Dealership Operations by
21 Dealer . . . is substantiated to its satisfaction or
22 which, even if unsubstantiated, in American Honda's
23 judgment may have an adverse effect on the reputation
24 of Dealer, the Dealership Operations or American
25 Honda; or any conviction in any court of original
26 jurisdiction of dealer or of any of the Dealer Owners
27 or any employee of Dealer for any crime or violation
28 of any law if, in the opinion of American Honda, such
29 conviction or violation may adversely affect the
30 conduct of the Dealership Operations or tend to be
31 harmful to the goodwill or reputation of American
32 Honda, Honda Products, or the Honda Trademarks,
33 whether or not such crime or violation of law is
34 directly related to or arises out of the Dealership
35 Operations[.]

Def. Ex. 12-14.

1 the felony theft and possession counts were reduced to
2 misdemeanors. See Or. Rev. Stat. § 161.705. His convictions
3 were affirmed after appeal to the Oregon Court of Appeals, and
4 the Oregon Supreme Court denied review.

5 After his conviction and failed appeal, the City of Roseburg
6 revoked ECI's business license because the crimes of conviction
7 were related to his business dealings. The revocation was
8 sustained on appeal. Wing was permitted an extension of the
9 revocation enforcement period in order to relocate his business
10 outside of the city's boundaries. The convictions and business
11 license revocation attracted media attention, appearing in a
12 newspaper and on news websites.

13 On May 18, 2007, AHM sent a Notice of Termination to ECI,
14 citing Wing's conviction and the revocation of his business
15 license. ECI then applied for approval from AHM to relocate to
16 Sutherlin, Oregon. In response, AHM stated that the application
17 would be denied unless ECI remedied the grounds for termination.
18 ECI relocated to Sutherlin without permission, and AHM then sent
19 further Notices of Termination based on ECI's unauthorized
20 relocation.

21 ECI thereafter brought this action, seeking a declaratory
22 judgment stating that AHM's termination of the Sales and Service
23 Agreements lacked "good cause" under Or. Rev. Stat. § 650.140.
24 AHM counterclaims for a judgment declaring that the requirements
25 of that statute are met, and termination is appropriate. AHM
26 moves for summary judgment. For the following reasons, the
27 motion is granted.

1 exists to terminate a franchise agreement." Cascade Motorsports
2 of Oregon v. American Suzuki Motor Corp., No. 03-6263-AA, 2004 WL
3 1839434 at *6 (D. Or., Aug. 16, 2004).

4 Before engaging in that inquiry, I am called upon to resolve
5 a question of statutory interpretation. The parties disagree
6 about whether the court must consider each and every factor
7 recited in Or. Rev. Stat. § 650.140(2) when determining whether
8 "good cause" exists, and they dispute whether weight should be
9 assigned to each factor equally. As AHM argues, in its plainest
10 sense, the phrase "such factors as" would suggest that the listed
11 factors include options among many possible considerations that
12 the court might employ in deciding a particular case. ECI
13 contends that this court should look to the opinion of Circuit
14 Joan G. Seitz, which held that each factor requires consideration.
15 Judge Seitz based her analysis on Welches School Dist. v. Welches
16 Educ. Ass'n, 842 P.2d 437 (Or. App. 1992), review denied, 854 P.2d
17 940 (Or. 1993), an appellate opinion that construed similar
18 language in Or. Rev. Stat. 243.682(1) and concluded that the court
19 must consider each listed factor. Judge Seitz added that full
20 consideration of each factor implements the legislature's purpose
21 in enacting the statute, which is to ensure the availability of
22 meaningful judicial review of a franchisor's proposed termination
23 decision. In plaintiff's view, such an interpretation of the
24 statute would not allow a single "good cause" factor to outweigh
25 any other.

26 When interpreting an Oregon statute, the court's goal is to
27 give effect to the legislative intent. PGE v. Bureau of Labor and
28 Industries, 859 P.2d 1143 (Or. 1993). If the terms of the statute

1 are ambiguous, the court looks to the text of the statute within
2 the context of the code in order to determine whether the
3 ambiguity is resolved. If not, the court turns to the legislative
4 record in order to discern the legislative intent. Id.

5 In this case, the terms of the statute give rise to some
6 ambiguity concerning the scope of the court's "good cause"
7 inquiry. On the one hand, the term "shall" indicates a
8 legislative mandate to the court to consider stated factors.
9 However, the phrase "such factors as" suggests that the statute
10 contains a nonexclusive list, implying that other relevant
11 information may be considered in each fact-laden determination.
12 Further, the phrase "good cause" sounds in equity. Although the
13 inquiry is governed by statute, the ultimate determination of the
14 court concerns whether a termination is fair. Such an inquiry
15 will necessarily draw from a number of factual considerations,
16 each carrying its own weight within the larger, comprehensive
17 analysis.

18 The context of the statute provides little guidance.
19 Although I understand that the Oregon Court of Appeals considered
20 a statute containing a similar term in Welches School Dist. v.
21 Welches Educ. Ass'n, the court did not undertake an analysis of
22 the terms of the statute and did not provide a holding concerning
23 statutory interpretation that would be applicable to the issue in
24 this case. Nor do I find any guidance from the context of
25 provisions surrounding Or. Rev. Stat. § 650.140.

26 I turn, then, to the legislative record, which is
27 instructive. Or. Rev. Stat. § 650.140 originated as Senate Bill
28 (SB) 930, proposed in the 1979 Oregon Legislative Assembly. It

1 was initially vetoed and then enacted in the 1980 Special Session.
2 According to the Administrator of the Senate Committee on
3 Transportation, the bill was designed to address

4 the bargaining disparity between national and
5 international manufacturers distributors and
6 importers, and local automobile dealers [and]
7 protect the local automobile dealer from potential
8 abuses by the manufacturer, distributor, or
9 importer. It gives the local dealer a chance to
10 stop, through court action, prohibited conduct, and
11 to recover damages for actual loss of money.

12 Measure Explanation, Senate Transportation Committee, A-Engrossed
13 SB 930 (emphasis added).

14 The bill was proposed by the Eugene New Car Dealer
15 Association to address a number of potential abuses by
16 franchisors, including coercion of franchisees in illegal
17 promotions, onerous inventory requirements, underpayment of
18 franchisees for warranty work, and inhibiting transfer of
19 franchise ownership. Tape Recording, Senate Transportation
20 Committee, SB 930, May 23, 1979, Tape 38, Side 2 (statement of
21 Paul Romain). There is little evidence in the legislative record
22 that such abuses were frequent in Oregon; rather, the impetus
23 appears to have stemmed from the concern that such abuses might
24 occur, and from the enactment of similar protective legislation
25 in other states. Minutes, House Business and Consumer Affairs
26 Committee, SB 930, June 19, 1979, 4 (dialogue between Rep. Lombard
27 and General Motors Attorney John Wilson).

28 Among those concerns was unfair termination of a franchise
agreement. The bill's chief proponent, Paul Romain, representing
the Oregon Automobile Dealers Association, explained that
protection from "arbitrary" termination of franchise agreements

1 was appropriate because franchisees often enjoyed little
2 bargaining power when negotiating the agreements and stood to lose
3 significant investments into the franchise. Tape Recording,
4 Senate Transportation Committee, SB 930, May 23, 1979, Tape 38,
5 Side 2 (statement of Paul Romain). In order to preclude such
6 situations, SB 930 included the opportunity for a franchisee to
7 seek a judicial determination of whether "good cause" exists for
8 termination.

9 Much of what can be discerned about the legislative intent
10 for the court's role in determining "good cause" derives from an
11 exchange between Romain and the members of the Senate
12 Transportation Committee in a May 23, 1979 hearing.² At the
13 hearing, Romain assured the committee that his client's intent was
14 not to institute a complicated bureaucracy for governing franchise
15 agreements, but to give dealers certain procedural protections
16 that would guard against unfair practices that might result from
17 an imbalance of bargaining power. Id.

18 Concerning the purpose of what would become Or. Rev. Stat
19 § 650.140(2), Romain explained, "if the dealer believes that he's
20 being taken by the manufacturer . . . he can go into court and
21 enjoin the activity and the court will decide based on standards
22 we have set out as examples, not exclusive standards, will decide
23 if there is cause to remove it." Id. (emphasis added). When
24 asked by Senator Day about the meaning of "good cause," Romain
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26 ²The version of the provision discussed at the phase of the
27 legislative process was largely similar to the provision later
28 enacted; subsequently, the text of current Or. Rev. Stat. §
650.140(3), the procedures governing the dealer's invocation of the
court's review, were added. See Minutes, Senate Transportation
Committee, June 6, 1979, 2.

1 explained that the term required a review of the circumstances of
 2 the agreement, which includes the listed factors and other
 3 relevant considerations. The review was designed to deter
 4 coercive practices that could result from an imbalance of
 5 bargaining power:

6
 7 The term "good cause" is, as you know from dealing with
 8 legislation all the time, is a very common word in
 9 statutes. Basically, what we are trying to do . . . is
 10 set out some guidelines for the court to use in
 11 determining good cause. We don't want to limit the
 12 court to this [list of factors]. We just want to tell
 13 the court basically what we're thinking about . . .
 14 look at the permanency of the investment, look at the
 15 business transacted by the dealer, look at the
 16 obligations incurred, look at the adequacy of the
 17 facilities that the franchisee has, the qualifications
 18 of the management, service that he is providing, the
 19 failure of the franchisee to substantially comply in
 20 good faith with the requirements of the franchise that
 21 are reasonable and material . . . in other words, what
 22 we want you to do in court is look at the total
 23 picture: Is this person complying with the franchise
 24 agreement, are they servicing the public, and look at
 25 all that, look at it, before you just arbitrarily allow
 26 a manufacturer [to cancel] because the manufacturer is
 27 big, and because the manufacturer is big, the dealer is
 28 not able to get these things into a franchise
agreement[.]

19 Id. (emphasis added). Romain further emphasized that the factors
 20 listed in Or. Rev. Stat. § 650.140(2) provide guidelines of the
 21 courts inquiry and are nonexclusive:

22 [Or. Rev. Stat. § 650.140(2) sets] guidelines
 23 for a court to use in determining what "good
 24 cause" is. Most of your statutes do not even go
 25 that far. Most of your statutes just say, "good
 26 cause," period. But what we're saying is the
 27 legislature should give the court some
 28 guidelines, and when you're talking about "good
cause," while it's a business transaction, and
you shouldn't have to lay out everything in the
statute because there are many variables that
come in all the time, the court should consider
 at least what we're talking about in [Or. Rev.

1 Stat. § 650.140(2)].

2 Id. (emphasis added). Romain also explained that the list of
3 considerations was "basically taken" from statutes in California
4 and Texas, and were included because such considerations would be
5 relevant in Oregon business as well. Id.³ When asked by Senator
6 Khafoury whether the motivation of the franchisor is relevant to
7 the court's inquiry, Romain replied, "motivation of the
8 manufacturer I think is one that the court can consider. The
9 court is not precluded from considering that." Id. Thus, when
10 read in the context of the statute's broader purpose, it is clear
11 that whether a franchisor's motivations stem from abusive or
12 coercive dealings can be relevant to the court's "good cause"
13 inquiry.

14 A Eugene, Oregon car dealer, Mr. Huling,⁴ also testified at
15 the same hearing. Summarizing his position, he explained that the
16 protections were needed to protect against potential abuses that
17 might result from an imbalance of bargaining power: "Basically,
18 what we are looking for is more of a bilateral agreement with the
19 manufacturer instead of unilateral . . . we'd like our little day
20 in court once in a while." Tape Recording, Senate Transportation
21 Committee, SB 930, May 23, 1979, Tape 38, Side 2 (statement of Mr.
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23 ³In a later hearing, Representative Lombard observed that the
24 California statute required the "good cause" determination to occur
25 in an administrative agency, rather than in a court, but commented
26 that the court venue was not problematic because the court's
27 determination would be guided by the statutory factors in Or. Rev.
28 Stat. § 650.140(2). Tape Recording, House Business and Consumer
Affairs Committee, SB 930, June 19, 1979, Tape 28, Side 1
(statement of Rep. Lombard).

⁴No first name for. Mr Huling was cited in the legislative
record.

1 Huling) (emphasis added).

2 The provision was adopted by the Committee on June 6, 1979,
3 after an amendment added at the suggestion of Lee Ridgeway of
4 General Motors, which requires a dealer to file a complaint to
5 initiate a "good cause" review of a franchisor's termination
6 decision. Minutes, Senate Transportation Committee, June 6,
7 1979, 2; Testimony, Senate Transportation Committee, SB 930, May
8 23, 1979, Ex. D (statement of Lee Ridgeway).

9 The bill was then forwarded to the House Business and
10 Consumer Affairs Committee. Romain again reviewed the purpose of
11 the bill's components, and explained the "good cause" requirement
12 in this way:

13 The dealer should be allowed a day in court as his
14 expense to require the manufacturer to show that
15 there is some good cause to terminate the franchise,
16 especially when a dealer has put so much time, so
17 much effort [into a franchise]. We try to set out
18 in subsection 2 general standards for a court to
19 look at in determining if there is good cause.

20 Tape Recording, House Business and Consumer Affairs Committee, SB
21 930, June 19, 1979, Tape 28, Side 1 (statement of Paul Romain).

22 Romain then noted that the provisions reflected amendments
23 made in consultation with the bill's primary opponents, agents of
24 General Motors who represented interests of franchisors. Id. At
25 that hearing, Lee Ridgeway of General Motors testified that he did
26 not know how the concern about inequitable terminations arose in
27 Oregon and informed the committee, "We don't like to terminate
28 dealers. That is not what we're in business to do." He explained
that terminations were infrequent at GM, occurring in only 12 of
13,000 cases over the previous year. Tape Recording, House

1 Business and Consumer Affairs Committee, SB 930, June 19, 1979,
2 Tape 28, Side 1 (statement of Lee Ridgeway). The Committee
3 adopted amendments that did not substantially change the provision
4 at issue, and the Vice-Chair moved that it be forwarded to the
5 floor with a "do-pass" recommendation. The motion carried
6 unanimously. Minutes, House Business and Consumer Affairs
7 Committee, SB 930, June 19, 1979, 3. The bill was passed in both
8 houses but vetoed in 1979. It was enacted the following year, in
9 the 1980 Special Session.

10 Based on the foregoing information from the legislative
11 record, I can discern four points that were made known to the
12 committees that deliberated the bill and approved it. (1)
13 Franchise agreements are business transactions that should be
14 respected, but limited court review may be invoked to protect
15 against an abuse of power in a termination decision. (2) The types
16 of abuse of power contemplated included coercive business
17 practices of franchisors, such as contract abuses to which
18 franchisees might be susceptible to because of a lack of
19 bargaining power. (3) The bill provides a procedural protection
20 by allowing the franchisee an opportunity to ask a court to
21 determine whether "good cause" supports a franchisor's termination
22 decision. (4) The "good cause" determination is based on an
23 examination of nonexclusive list of factors and any other relevant
24 considerations that might reveal the types of coercive practices
25 that the statute was designed to deter.

26 I note that the legislative discussions concerning the
27 court's role do not indicate that the court must allocate equal
28 weight to each of the listed factors. Although it is clear that

1 the drafters intended that each would receive some consideration
2 by the court, they also emphasize that the court should consider
3 any other factors that bear on the question of whether coercive
4 practices influenced the termination decision. Necessarily, then,
5 the court must consider, within the context of the relationship
6 between the franchisor and franchisee, any factors that might
7 indicate coercion and assign appropriate weight to those factors
8 when determining whether the termination bespeaks a practice that
9 the statute seeks to deter.

10 On the record before the court, the application of the
11 factors to the facts of this case is straightforward. As an
12 initial matter, the abuses of power that the statute was drafted
13 to deter are absent in this case. There is no indication that
14 plaintiff is the object of any coercive business practices.
15 Rather, the record indicates that AHM and ECI had a profitable
16 mutual relationship for a time prior to Wing's convictions. His
17 license was thereafter revoked, and he was forced to relocate
18 beyond the city line. He did so without permission from AHM and
19 in violation of the Sales and Service Agreement. But for Wing's
20 own breach of the agreement, there is no indication that the
21 franchise would have been terminated.

22 I turn now to a consideration of the statutory factors,
23 beginning with (2)(f), which weighs very heavily in AHM's favor.
24 Under that subsection, the court considers "[t]he failure of the
25 franchisee to substantially comply in good faith with those
26 requirements of the franchise which are reasonable." There is no
27 dispute of fact concerning whether Wing was convicted of felonies
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1 related to his business;⁵ he purchased a stolen motorcycle,
2 understood that serial numbers had been intentionally removed,
3 involved an employee in its disassembly, and implicated ECI in the
4 transaction by testifying at the criminal proceeding that his
5 store purchased the items. Further, the record indicates that
6 Wing and ECI failed to comply with critical components of the
7 mutually agreed-upon Sales and Service contracts, which required
8 Wing to refrain from criminal activity that might affect AHM's
9 reputation, maintain a business license, and acquire permission
10 before relocating the dealership. Wing's actions demonstrate
11 absolute disregard for AHM's licensing and relocation
12 requirements. His convictions bespeak bad faith in dealings with
13 potential customers, employees, the police, and those dealings
14 endanger the reputation of his supplier, AHM.

15 Concerning subsection (2)(e), "[t]he qualifications of
16 management, sales and service personnel to provide the customer
17 with reasonably good service and care of new motor vehicles," I
18 note that Wing's own conviction and license revocation cut heavily
19 against his qualifications to serve as an AHM franchisee.

20 Although the remaining factors do not weigh as much against
21 plaintiff, neither do they rescue his case.⁶ Under subsection
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23 ⁵ I note that Wing's felonies were reduced to misdemeanors for
24 purposes of sentencing, but this does not change the factual point
25 that he was convicted of felony crimes. See State v. Smith, 677
26 P.2d 715, 716 (Or. App.), aff'd, 691 P.2d 89 (Or. 1984) ("[A]
person is 'convicted' of the crime of which he or she is found
guilty. Entry of judgment of conviction is simply another
matter.").

27 ⁶ A sports analogy may help illustrate this point. Suppose
28 the legislature wanted to protect Major League Baseball players
from being cut absent "good cause" and lists certain nonexhaustive

1 (2) (a), I am to consider "[t]he amount of business transacted by
2 the dealer as compared to the amount of business available to the
3 dealer." Here, I note that although ECI's ranking remained high
4 for a period even after Wing's conviction, its performance
5 decreased in recent months and has plummeted in Honda's national
6 rankings, due in part to a general market downturn. Concerning
7 subsections (2) (b) and (2) (c), "[t]he investment necessarily made
8 and obligations necessarily incurred by the franchisee in the
9 performance of the franchise," and the "permanency of the
10 investment," plaintiff asserts that he has spent over one million
11 dollars on the Sutherlin dealership. As AHM explains, this
12 statement does not segregate plaintiff's investments for other
13 ongoing franchises in the Sutherlin location. Even assuming
14 (giving the plaintiff the benefit of favorable factual inferences)
15 that significant funds supported the Honda franchise in Sutherlin,
16 the investment was ill-advised because the relocation was
17 unauthorized.

18 Concerning subsection (2) (d), "[t]he adequacy of the
19 franchisee's new motor vehicles sales and service facilities,
20 equipment and parts," plaintiff contends that the Sutherlin
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22 factors for the court to consider: e.g., batting average, RBI
23 production, home run total, stolen bases, and number of errors
24 committed. A team in the National League (which does not have the
25 designated hitter rule) decides to cut a player who ranks at or
26 above average in most of the listed categories but is far below
27 average on defense. Management accordingly decides that the
28 player's defensive shortcomings outweigh his offensive production
and thus waives him. Under such a statutory scheme, while the
court may be called upon to consider all the factors, the court
should not substitute its personal opinion in the matter nor rotely
assign equal weight to each factor as if some mathematical equation
were implicated. It is enough to conclude that management's
decision was not arbitrary, i.e., that the player's defensive
liabilities provide "good cause" for the decision.

1 facility is more than adequate because it is more spacious than
2 his Roseburg location. For purposes of addressing defendant's
3 summary judgment motion, the court accepts this representation as
4 true. Nonetheless, as explained previously, the factors are not
5 entitled to equal weight in the analysis.

6 Measured along with the remaining factors, Wing's
7 convictions, which involve crimes of dishonesty involving his
8 business, and his failure to comply with the agreed-upon and
9 reasonable terms of the franchise agreement, justify termination.
10 The court will not force AHM to continue its business relationship
11 with Wing, whose convictions adversely affect AHM's reputation and
12 violate the Sales and Service Agreements. Further, requiring the
13 business relationship to continue after Wing's decisions to
14 continue his Honda sales and repair after revocation of his
15 license and the unauthorized relocation would eviscerate material
16 provisions of the contracts to which Wing agreed and put this
17 court in the business of regulating franchise relationships
18 without respect to reasonable business expectations. Such an
19 action would clearly exceed the legislative intent underlying Or.
20 Rev. Stat. § 650.140, which was to protect franchisees from
21 coercive and abusive trade practices. In sum, "good cause" exists
22 for the termination of the Sales and Service agreements under Or.
23 Rev. Stat. § 650.140(2).

24 25 CONCLUSION

26 Defendant's motion for summary judgment (#31) is granted.
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1 IT IS SO ORDERED.

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3 Dated this 20th day of April, 2008.

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7 THOMAS M. COFFIN
8 United States Magistrate Judge
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